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No. 00-1737

In The Supreme Court Of The United States

WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC., et al.,

Petitioners,

v.

VILLAGE OF STRATTON, et al.,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF OHIO AND NINE OTHER STATES AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

BETTY D. MONTGOMERY
Attorney General of Ohio
DAVID M. GORMLEY*
State Solicitor
**Counsel of Record*
ELISE W. PORTER
KIRK A. LINDSEY
Assistant Solicitors
30 E. Broad Street, 17th Floor
Columbus, Ohio 43215
(614) 466-8980

Counsel for the Amici States

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27 pp

RICHARD BLUMENTHAL
Attorney General
State of Connecticut

STEVE CARTER
Attorney General
State of Indiana

THOMAS J. MILLER
Attorney General
State of Iowa

RICHARD P. IEYOUB
Attorney General
State of Louisiana

J. JOSEPH CURRAN, JR.
Attorney General
State of Maryland

THOMAS REILLY
Attorney General
Commonwealth of Massachusetts

FRANKIE SUE DEL PAPA
Attorney General
State of Nevada

W. A. DREW EDMONDSON
Attorney General
State of Oklahoma

HOKE MACMILLAN
Attorney General
State of Wyoming

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INTEREST OF THE *AMICI* STATES

The ten amici States write to urge the Court to affirm the judgment of the court of appeals. State and local governments have a pressing interest in protecting citizens from fraud and other crimes committed by charlatans posing as door-to-door solicitors, and providing that protection is among the chief aims of the local ordinance that the Petitioners have attacked in this case. Many consumer frauds are committed by persons who show up on our doorsteps unidentified and uninvited to peddle goods or services, and more serious offenses – including home burglaries – are often associated with door-to-door solicitation as well.

Solicitor registration and identification requirements like those imposed by the municipal ordinance in this case sensibly protect the safety and privacy of citizens in their homes and on their doorsteps, and this ordinance does so without restricting the content of the messages that door-to-door solicitors communicate. State and local governments should be allowed to adopt solicitor registration and identification requirements if they choose, and because the local ordinance in this case promotes important government interests without restricting the First Amendment rights of the Petitioners or other speakers, the amici States urge the Court to affirm the judgment below.

SUMMARY OF ARGUMENT

The village ordinance challenged in this case – an ordinance that requires all prospective door-to-door solicitors in Stratton, Ohio to secure a permit from the Village's mayor before knocking on any doors – is fully consistent with the First Amendment. That ordinance directs any would-be door-to-door caller to provide his name, address and group affiliation, if any, to the mayor's office. Those who do so "shall be furnished" the permit, according to the ordinance.

The court of appeals, like the district court before it, rejected the Petitioners' First Amendment challenge to the ordinance, and that judgment should be affirmed.

First, the ordinance promotes the significant interests of state and local government officials in protecting their citizens from the considerable risks associated with door-to-door activity. Uninvited, unknown guests on our doorsteps are well-placed to commit fraud or other crimes against people and property, and this particular Village has sensibly concluded that collecting and keeping on file the names and addresses of door-to-door solicitors will help law enforcement officials track down any lawbreakers, and may even deter crime or fraud before it happens.

The home is different than other fora where speakers communicate, for the home is where our privacy and personal security interests are at their highest. Though the First Amendment protects the right of speakers to communicate anonymously, the cases in which the Court has recognized that right involved communication in public places, not on the doorsteps of private homes. When, as in this case, uninvited speakers choose to enter the private property of others to spread a message or to sell a product, the government's insistence that those speakers first provide their names and addresses to village officials does not restrict free-speech interests in the same way as would a similar condition placed on speech on public property.

The Village has not barred door-to-door soliciting, and has not imposed any restrictions on the messages that door-to-door communicants choose to present. The ordinance simply imposes the kind of name-and-address identification requirement that the Court has described favorably in past decisions. And the ordinance appropriately limits the mayor's discretion by limiting the information that he may collect and by directing him to grant a permit without

charge to all applicants who provide that information. Moreover, the ordinance affects only door-to-door communication, thereby leaving speakers free to communicate as they choose (whether anonymously or otherwise) in the Village's public spaces.

Whether analyzed as a time, place and manner regulation, or as a regulation of symbolic expression, the Stratton ordinance does not restrict speech rights of the Petitioners or others. The ordinance compels uninvited door-to-door speakers to first identify themselves to the mayor, and then to carry a permit, but given that those speakers choose to communicate in a way that takes them onto the private property of Village residents, and given the Village's legitimate and pressing interest in protecting residents from crime, fraud and annoyance in their homes, the ordinance passes the relevant tests. The Village's identification requirement for door-to-door solicitors is viewpoint-neutral, is no greater than necessary to promote the Village's interest in protecting residents from the potential dangers posed by uninvited and unknown strangers on the doorstep, and leaves open other fora for the kind of anonymous speech that the Petitioners hope to deliver. The judgment of the court of appeals should be affirmed.

ARGUMENT

I. State And Local Government Officials Are Rightly Concerned About The Crime And Fraud Associated With Door-To-Door Solicitation.

Though the Petitioners in this case no doubt engage in door-to-door communication with the noblest of motives, the fact remains that door-to-door solicitors are not always honest or trustworthy. And when an uninvited visitor commits fraud or worse on the doorstep or inside the home of

a vulnerable resident, that mysterious visitor is often hard to identify and prosecute because he can disappear just as quickly and anonymously as he arrived. Solicitor registration and identification requirements like those in this case can help residents and local law enforcement officers identify any wrongdoers after the fact, and may actually prevent some planned in-home crimes or rip-off schemes in the first place. By doing so, those regulations can serve an important role in crime detection and prevention in our communities.

Citizens often turn to state and, particularly, local government officials with concerns about door-to-door solicitors. The Consumer Protection Section of the Ohio Attorney General's Office alone has received 685 complaints from Ohio citizens regarding fraudulent schemes associated with door-to-door solicitation activities since 1993.

The targets of door-to-door fraudulent schemes are often ill-prepared to respond appropriately to the clever words of anonymous and uninvited guests at the front door. Helen MacMurray, the former chief of the Consumer Protection Section of the Ohio Attorney General's Office, testified in the trial court that "today's scam artists tend to focus on the most vulnerable populations, and we find those to be senior citizens and people with low education and low income levels." Trial Tr. at 212. See also Consumer Behavior, Experience and Attitudes: A Comparison by Age Groups (Princeton Survey Research Associates, March 1999).

Catching the perpetrators of door-to-door scams is particularly difficult because many of the suspects stay in each city or town so briefly. By the time local residents report the crime or fraud, the scam artists are long gone, and often the victims do not even know the perpetrators' true identities. In the end, delay and identification problems

generally prevent the police from ever catching the offenders. See Defendants' Tr. Ex. 39.

In addition, burglaries and other serious crimes are often perpetrated by those posing as door-to-door solicitors. Numerous news articles tell the tale. Jaxon Van Derbeken, *98-Year-Old Latest Victim In Series Of Home Invasions*, San Francisco Chronicle, Sept. 13, 2000 at A18 (man soliciting gardening jobs door-to-door was invading homes, tying up elderly residents and robbing them); Brenda Ingersoll, *Sex Crime Suspect Traveled With Church Group*, Wisc. State Journal, Feb. 19, 2000 at 1B (describing sexual assaults committed by a man going door-to-door purportedly on behalf of a church group); Kristi E. Swartz, *Fake Jehovah's Witnesses Steal Woman's $600*, Durham Herald-Sun, Jan. 5, 1999 at C1 (describing burglary perpetrated by a couple claiming to be Jehovah's Witnesses); Polly Ross Hughes, *Vacuum Cleaners' Maker Held Liable For Rape Damages*, Houston Chronicle, Jan. 1, 1999 at A33 (door-to-door vacuum cleaner salesman committed a rape); *Residents Warned Of Sales Incidents*, Orlando Sentinel, October 15, 1998 at B2 (door-to-door salesman casing homes for burglaries).

The connection between door-to-door activity and crime is evident in court decisions as well. See, e.g., *State v. Manis*, 2000 Ohio App. LEXIS 3298 (Ohio App., 12th Dist. 2000) (door-to-door meat and seafood salespersons burglarized a home while one co-defendant provided cover by continuing to sell meat to the victim); *State v. Huda*, 1994 Ohio App. LEXIS 4490 (Ohio App., 8th Dist. 1994) (home burglary scam); *State v. Steffen*, 509 N.E.2d 383 (Ohio 1987) (a door-to-door salesman stuffed a cleaning rag into a victim's mouth, struck her repeatedly, cut her throat and raped her), *cert. denied*, 485 U.S. 916 (1988).

According to the FBI, 88,636 burglaries were reported in Ohio in the year 2000, and 2,049,946 were reported around the country. Crime in the United States, FBI Uniform Crime Reports 2000 ("2000 Crime Reports") at 81 and 114. Two out of every three burglars struck homes rather than commercial buildings. *Id.* at 42 and 114. Nationwide, 67% of all burglaries involved forcible entry, and over half (61%) occurred during daylight hours. *Id.* at 42.

But while there were 10.2 million theft and burglary offenses reported in the United States in the year 2000, all of those reports resulted in only 1.6 million arrests. 2000 Crime Reports at 9 and 39. Statistics collected at the state level tell the same story. According to the Ohio Office of Criminal Justice Statistics, there were only 5,706 arrests for burglaries in Ohio in 1999, although over 90,000 such crimes were reported.

In short, uninvited door-to-door speech by anonymous strangers can pose considerable risks to vulnerable citizens. One sensible way for state and local governments to protect the privacy and safety of citizens is to do what the small Ohio village of Stratton has done in this case: require any door-to-door solicitors to identify themselves and to register with the mayor's office before knocking on doors. The Village's leaders have sensibly concluded that this measure – one that does not turn on the message that any given solicitor hopes to convey to the Village's residents – will boost the safety of citizens and will help local law enforcement officers catch (if not deter) any solicitors who aim to perpetrate scams or outright crimes at the homes of local residents.

II. The Village's Door-To-Door Regulations Strike The Right Balance Between Government's Concerns About The Safety And Privacy Of Homeowners On The One Hand And The Interests Of Speakers In Communicating Their Messages On The Other.

A. Our Homes Are Not Like The Other Venues Where Speakers Spread Their Messages In Person.

The Court has repeatedly held that the government's interest "in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." *Frisby v. Schultz*, 487 U.S. 474, 484 (1988), quoting *Carey v. Brown*, 447 U.S. 455, 471 (1980). Several times, the Court has noted "the unique nature of the home," describing it as "'the last citadel of the tired, the weary, and the sick.'" *Frisby*, 487 U.S. at 484, quoting *Gregory v. Chicago*, 394 U.S. 111, 125 (1969) (Black J., concurring). And the home is "the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits." *Frisby*, 487 U.S. at 484, quoting *Carey*, 447 U.S. at 471.

An "important aspect of residential privacy is protection of the unwilling listener." *Frisby*, 487 U.S. at 484. While circumstances necessarily force all of us to encounter unwelcome speech in public places on occasion, the home is different. "That we are often 'captives' outside the sanctuary of the home and subject to objectionable speech . . . does not mean we must be captives everywhere." *Rowan v. United States Post Office Dept.*, 397 U.S. 728, 738 (1970). "[I]ndividuals are not required to welcome unwanted speech into their own homes and . . . the government may protect this freedom." *Frisby*, 487 U.S. at 485 (upholding ordinance restricting picketing of home), citing *FCC v. Pacifica*

Foundation, 438 U.S. 726, 748-49 (1978) (offensive radio broadcasts); *Rowan*, 397 U.S. at 738 (offensive mailings); *Kovacs v. Cooper*, 336 U.S. 77, 86-87 (1949) (sound trucks).

Indeed, the Court has held that private property owners, even those who invite the public on their premises for commercial purposes, may forbid First Amendment activities that are not related to the commercial purposes of the property. *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972); *Cf. PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980) (state constitution may permissibly require private shopping center to allow First Amendment activity).

To be sure, the Court has held that citizens enjoy a right to distribute anonymous election-related pamphlets and publications. *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995); *Talley v. California*, 362 U.S. 60 (1960). Both *McIntyre* and *Talley* noted the longstanding American tradition of citizens publishing anonymous political tracts, including the Federalist Papers, the Anti-Federalist Papers, and the work of a "pre-Revolutionary War English pamphleteer 'Junius,' whose identity remains a mystery." *McIntyre*, 514 U.S. at 343 n.6. And the Court has held unconstitutional a requirement that a political canvasser wear a badge with his or her name on it. *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 200 (1999). Underlying each of those decisions is the Court's sensible conclusion that the First Amendment protects the right of those espousing unpopular or anti-government opinions to speak out anonymously in public places without fear of government reprisal against them. *McIntyre*, 514 U.S. at 342-44.

In addition, there are "times and circumstances when States . . . [may] not compel members of groups engaged in the dissemination of ideas to be publicly identified." *Talley*, 362 U.S. at 65. See, e.g., *Bates v. Little Rock*, 361 U.S. 516,

523 (1960) (State could not enforce occupational license tax requirement to compel disclosure of the membership list of an organization not subject to the tax); *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 462 (1958) (right to free association prevented State from compelling disclosure of membership lists of advocacy groups, particularly those "espous[ing] dissident beliefs").

But unlike those who anonymously publish pamphlets for distribution in public places, or those who maintain the membership lists of private groups, or those who seek signatures or ask for other expressions of support for unpopular causes in public fora, door-to-door solicitors enter the private property of the listener. No one has a constitutional right to enter the property of others anonymously for any reason, whether it be to commit crimes, to sell commercial products, to collect money for charity, to distribute pamphlets or even just to share ideas. The Court has said as much already. See *Hynes v. Mayor and Council of Oradell*, 425 U.S. 610, 619 (1976) ("There is, of course, no absolute right under the Federal Constitution to enter on the private premises of another and knock on a door for any purpose, and the police power permits reasonable regulation for public safety."). Indeed "[o]f all the methods of spreading unpopular ideas, house-to-house canvassing seems the least entitled to extensive protection." *Id.* (parentheses and citation omitted).

That is so not only because of the significant respect given to private property in this country, but also because of the importance of the personal security and privacy that our homes afford us. "[H]ome is one place where a man ought to be able to shut himself up in his own ideas if he desires." *Hynes*, 425 U.S. at 619 (citation omitted). Door-to-door solicitation involves quite the opposite: a homeowner's forced personal encounter on his property with an uninvited guest. And it sometimes brings with it the kind of "persistent

importunity, following and dogging" that is at best bothersome and at worst frightening or even dangerous "after an offer to communicate has been declined." *Hill v. Colorado*, 530 U.S. 703, 718 (2000) (citation and quotations omitted). Even speech directed from a public area toward a private home may be banned. See *Frisby v. Schultz*, 487 U.S. 474 (1988) (upholding a ban on residential picketing aimed at a particular home).

Thus, while the Petitioners and others surely enjoy the very important right to express their views openly (and anonymously, if they choose) in public places, government is entitled to balance that right against the interests of homeowners once the Petitioners or other speakers choose to carry their messages to the private doorsteps of individual citizens. Whatever interest a speaker may hold in maintaining his anonymity, when he chooses to tread uninvited on the private property of others, the government is entitled, in light of citizens' legitimate safety and privacy concerns, to demand that the speaker publicly reveal his identity before he sets foot on others' private property.

B. The Requirement That Door-To-Door Solicitors Disclose Their Names And Addresses Is Consistent With This Court's Precedents.

Without an identification requirement like the one in this case, which includes a provision allowing each resident to demand that any uninvited guest provide proof of his identity, homeowners and the municipality in which they live would lose one of their key tools in responding to the often unwelcome and sometimes criminally dangerous overtures of door-to-door solicitors. This Village's insistence that those who intend to travel uninvited onto the property of others may do so only after providing their names to Village officials is a minimally intrusive measure that helps protect

Village residents from charlatans and criminals while still preserving the speech rights of those who choose to sell their wares or spread their messages by knocking on doors.

Though the Court nearly 60 years ago narrowly rejected another Ohio municipal ordinance that forbid door-to-door solicitors from knocking on doors or ringing doorbells while distributing handbills, the Court at the same time spoke favorably about the kind of identification requirement that is at issue in this latest case. See *Martin v. Struthers*, 319 U.S. 141, 148 (1943) ("A city can punish those who call at a home in defiance of the previously expressed will of the occupant and, in addition, can by identification devices control the abuse of the privilege by criminals posing as canvassers.").

In other door-to-door cases, the Court "has consistently recognized a municipality's power to protect its citizens from crime and undue annoyance by regulating soliciting and canvassing." *Hynes*, 425 U.S. at 616-17. *See Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940) ("Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent."); *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 636 (1980) (acknowledging that the government's interest in protecting the public from the "fraud, crime and undue annoyance" associated with door-to-door solicitation is "substantial").

Of course, any canvasser-identification requirement like that described approvingly in *Cantwell* and *Martin* must avoid the pitfall common to most of the other door-to-door regulations that the Court has examined: delegation of excessive discretion to a government official. The Stratton ordinance satisfies that key standard, for it delegates no

discretion at all to Village officials. Anyone registering "shall be furnished" a permit. Ord. § 116.04. As the court of appeals explained, "there is little room for [the Mayor] to make any decision once the applicant completes the Registration Form," 240 F.3d 553, 568, since the permit can be denied only if the prospective solicitor fails to provide objectively verifiable information, such as his name, address, and affiliated employer or organization. Ord. § 116.03(b). The same requirements and permit-approval standards apply regardless of the speaker's affiliation or proposed message. Because "perfect clarity and precise guidance" in the language of the permitting standards is not required, *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989), it is enough that the ordinance contain "neutral criteria to insure that the licensing decision is not based on the content or viewpoint of the speech being considered." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 760 (1988). The Stratton ordinance contains those neutral criteria.

Certainly if the mayor either demanded additional burdensome information from particular permit applicants or if he denied a permit to an applicant who had complied with the registration requirement as defined in the Village ordinance, the affected applicant could raise an as-applied challenge to the provision. Yet on its face, the ordinance contemplates an automatic permit grant to those who comply with the registration requirement, and Petitioners point to no arbitrariness or uneven enforcement of that requirement in their own or in any other individual cases.

C. Stratton's Identification Requirement For Door-To-Door Solicitors Reasonably Promotes The Village's Legitimate Interests In Crime Prevention And Homeowner Safety While Still Preserving Other Avenues For Anonymous Speech.

In addition, the Stratton ordinance addresses the *Martin* concern that the State "leave[] to each householder the full right to decide whether he will receive strangers as visitors . . . ." 319 U.S. at 147. The *Martin* Court described approvingly a model municipal regulation of the 1940s that – like the ordinance in this case – "would make it an offense for any person to ring the bell of a householder who has appropriately indicated that he is unwilling to be disturbed." 319 U.S. at 148. See also *Rowan v. United States Post Office Dept.*, 397 U.S. 728, 737 (1970) (a mailer's right to communicate is circumscribed by the recipient's right to give notice that he wishes no further mailings); *United States Postal Service v. Council of Greenburgh Civic Associations*, 453 U.S. 114, 129-30 (1981) (rejecting a First Amendment challenge to a federal statute barring the depositing of unstamped material in recipients' mail boxes).

Stratton's ordinance specifically allows the householder to inform a potential canvasser that solicitation is unwanted at that householder's address by filing a "No Solicitation Registration Form" with the Mayor's office, and posting a "No Solicitation" sign on his property. Ord. § 116.07. The canvasser is thereby put on specific notice as to which householders wish him to stay away.

Though Petitioners claim that the ability of Village residents to post "No Solicitation" signs ought to be enough to protect any privacy or security interests at stake without the additional need for enforcement of the Village's identification requirement for solicitors, their view misses the

mark. For those Village residents willing to welcome some but not all door-to-door callers, a blanket "No Solicitation" sign paints with too broad a brush. And whether a homeowner is one who welcomes all comers or is instead one who has expressed to the mayor's office a willingness to welcome some door-to-door knockers but not others, the homeowner who has not posted a "No Solicitation" sign can still, in light of the Village's solicitor identification requirement, feel protected from some of the dangers that homeowners elsewhere face when a mysterious solicitor comes calling.

The Village is entitled to try to give its residents that small measure of comfort and confidence that comes with the knowledge that any unwelcome callers are registered with the mayor s office. If anything goes wrong while the uninvited visitor is on the resident's property, or if the owner just feels afraid while talking to the strange visitor on his doorstep, that homeowner in this Village can ask to see the visitor's permit – not an unreasonable request, given that the guest has presumably arrived unannounced and uninvited on the property of another – and then take whatever action the homeowner thinks best. The identification requirement also allows the homeowner to turn away those speakers whom he does not wish to hear, thereby advancing the Village's legitimate interest in helping residents minimize unwanted at-home annoyances. And after the solicitor leaves, a homeowner in this Village can contact the mayor's office to follow up with any complaints about possible fraudulent or criminal conduct by the visitor while on the homeowner's property. With the help of the name and address information on file, Village officials can then track down the mysterious caller much more easily than in municipalities without such an ordinance.

Finally, and most importantly, numerous alternate fora are available for anonymous speech in Stratton. All the

cases in which anonymous speech has been held inviolable have one thing in common: if upheld, the challenged law in those cases would have left the speaker with no alternate means of anonymous communication. In *McIntyre* and *Talley*, the speakers were engaged in the most basic and one of the least expensive of First Amendment activities – distributing pamphlets. If required to identify themselves while pamphleteering in a public forum, the speakers in those cases would have had no realistic alternate forum for anonymous speech. The same was true of the badge requirement struck down in *Buckley* and the membership-disclosure measure in *N.A.A.C.P. v. Alabama*.

This case is markedly different, since the Stratton ordinance says not a word about speech – whether anonymous or not – in any location other than the private doorsteps of Village residents. Persons or organizations wishing to engage in anonymous speech enjoy the same wide range of public-forum possibilities in this Village as they do in any other. They can produce and distribute anonymous literature, and a speaker or pamphleteer can remain anonymous on a sidewalk, in a public park or in any other traditional or designated public forum in Stratton. The only thing that prospective anonymous speakers cannot do is enter the private property of Village residents. Yet nothing in the First Amendment's long history suggests that the Petitioners or any other anonymous speakers can demand access to private property in the same unrestricted way that they can to public areas.

III. The Door-To-Door Regulations In This Case Satisfy The Court's Tests For Permissible Restrictions On Expressive Conduct, As Well As Restrictions On The Time, Place And Manner Of Speech.

Whether analyzed under the test for symbolic conduct or under the "intermediate" time, place and manner standard that the court of appeals applied, Stratton's ordinance does not run afoul of the First Amendment. To satisfy the time, place and manner standard, the Village must of course show that its ordinance is content-neutral and narrowly tailored to promote rational interests in preventing fraud and in protecting local residents. And under the test for symbolic expression, the regulation is valid if it is narrowly drawn to further a substantial governmental interest, and if it is not aimed at limiting free speech. This ordinance meets either test.

The Village's insistence that door-to-door solicitors disclose their identities does of course satisfy the kind of intermediate time, place and manner standard that the court of appeals applied. Like the regulation in *Hill v. Colorado*, the challenged ordinance is "not a 'regulation of speech'" itself. *Hill*, 530 U.S. 703, 719 (2000). "Rather, it is a regulation of the places where some speech may occur," *id.*, for the Village has essentially confined anonymous speakers to all available sites other than the doorsteps of Village residents.

The Court in *Hill* let stand a state statute requiring an 8-foot "bubble" around patrons of health clinics to protect them from direct physical confrontation with "sidewalk counselors," who were primarily protesting abortions. As in *Hill*, the Court has repeatedly upheld time, place and manner restrictions on speech in public fora or on government property, see, e.g., *City Council v. Taxpayers for Vincent*,

466 U.S. 789 (1984) (signs on public property); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983) (mail slots for teachers at a public school), suggesting all the more that Stratton's regulation affecting conduct on the *private property* of Village residents is a reasonable measure that comports with the First Amendment.

And because the Village's door-to-door restriction regulates not speech but conduct – the act of entering onto the private property of others, regardless of the speaker's intended message – the Court's test for symbolic expression likewise poses no bar to the door-to-door restriction in this case. That test – one that "is little, if any, different from the [intermediate] standard applied to time, place, or manner restrictions," *Clark v. Community For Creative Non-Violence*, 468 U.S. 288, 298 (1984) – fits these facts well.

Indeed, this case is an easier one than *United States v. O'Brien*, 391 U.S. 367 (1968), or several of the Court's other symbolic expression cases, for the act of going door-to-door is not even conduct bound up with the kind of "symbolic speech" that the Court has recognized in previous cases. See, e.g., *Texas v. Johnson*, 491 U.S. 397 (1989) (flag burning); *Cohen v. California*, 403 U.S. 15 (1971) ("scurrilous epithet" on jacket). Door-to-door communication is merely the mechanism by which a person or organization disseminates its views – not an expression of those views themselves.

Under the *O'Brien* approach for conduct that combines speech and "nonspeech" elements, government regulation of that conduct is permissible under the First Amendment if the regulation (1) is within the constitutional power of the government, (2) furthers an important or substantial governmental interest that is unrelated to the suppression of free expression, and (3) is no greater than necessary to further that interest. 391 U.S. at 376, 377.

That test – one that gives the government considerable latitude to regulate conduct that carries some "alleged communicative element," *O'Brien*, 391 U.S. at 376 – provides a sensible approach for analyzing the kind of government regulation of conduct on private property that is at issue in this case. The Stratton ordinance says not a word about the things that door-to-door speakers may say or not say, but it does require that any door-to-door solicitors carry a Village-issued permit and be prepared to identify themselves to any residents onto whose property the solicitors enter. The ordinance, in short, regulates solicitors' methods but not their message. The fact that the affected solicitors choose to communicate their views in a way that necessarily carries them onto the most private space of each listener surely justifies the lightest of burdens on the government in justifying its regulation, at least where, as in this case, the regulation neither bars door-to-door soliciting nor turns on the views that any given speaker expresses.

Stratton's ordinance, including its identification requirement, easily passes the *O'Brien* test. The government certainly has the power to protect citizens against invasions to their privacy and safety in their own homes. The ordinance, including the identification requirement, surely furthers the interest of the Village in protecting its citizens from unwanted intrusion and criminal activity, and that interest has everything to do with public safety and nothing to do with free expression, as is made clear by the Village's policy of distributing door-to-door permits at no charge to all applicants regardless of their intended messages, as long as they supply a name and basic identifying information. And finally, even if the identification requirement imposes an incidental restriction on First Amendment freedoms, that restriction – one that permits door-to-door speakers to spread their message as they choose as long as they reveal their identities – is no greater than necessary to further the Village's interest in protecting local residents from the risks

associated with anonymous door-to-door scam artists and criminals.

Even the *O'Brien* standard may impose too tough a test on the government in cases like this, since Stratton's regulation affects only activity on private property, where surely the speaker's interests pale in comparison to those of individual homeowners and of the local government officials who are charged with protecting local residents' safety. But surely under *O'Brien* or under the very similar time, place and manner standard applied by the court of appeals, the ordinance in this case meets the test, for the Village's requirement that all door-to-door solicitors identify themselves and register with the mayor leaves all of them free to speak their messages on the private doorsteps of Village residents without restraint, and leaves all public fora open for the kind of anonymous speech that was at issue in *McIntyre*.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General of Ohio
DAVID M. GORMLEY*
State Solicitor
**Counsel of Record*
ELISE W. PORTER
KIRK A. LINDSEY
Assistant Solicitors

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